Legal Services Commission
OF SOUTH AUSTRALIA

WHEN THERE IS AN INTERVENTION ORDER AGAINST YOU

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(TTY 8463 3691) Contact the Legal Helpline on 1300 366 424 or www.lawhandbook.sa.gov.au

WHAT IS AN INTERVENTION ORDER?

An intervention order (previously known as a restraining order) is an order made by a magistrate or a police officer which limits how you can behave towards another person. It is not a criminal charge. The magistrate or police officer decides the restrictions which will apply in your particular case. Intervention orders usually say that you must not contact the other person (this includes by telephone, email or internet), and not go near their home or workplace. You may even be ordered to stay away from premises you own or rent. The order can also relate to personal property; it can prevent you from damaging or taking property, or require you to return or allow access to property. An intervention order will prevent you from having firearms or holding a firearms licence.

DOES AN INTERVENTION ORDER GIVE ME A CRIMINAL RECORD?

No. You are not being charged with breaking the law. It is a civil matter between you and the other person. However, once you are given an intervention order, it is a crime to breach the order. The police can arrest and charge you for breaching the order.

WHEN CAN SOMEONE APPLY FOR AN ORDER AGAINST ME?

Someone can ask the police or the court to place an intervention order against you if they claim it is reasonable to suspect that you will commit an act of abuse against them. An act of abuse can include:

- physical injury
- damage to property
- emotional or psychological harm
- the unreasonable denial of financial, social or personal autonomy.

Any child who may hear or witness, or be exposed to the effects of an act of abuse committed by you against a person may also be protected by an intervention order. Abuse can include indirect abuse. For example, if you threaten to harm someone the other person is close to.

HOW DOES SOMEONE APPLY FOR AN ORDER AGAINST ME?

If a person calls the police and the police suspect you may commit an act of abuse then the police can issue an *interim* intervention order if you are present or held in custody. This order takes effect immediately after it is given to you. It will require you to appear in court at a specified place and time (usually within 8 days) for a *determination* hearing. If an interim order is made against you, you must comply with all of the requirements set out in the order.

Alternatively, a person or the police can apply directly to the court for an intervention order. If a person or the police apply directly to the court for an intervention order, the court can make an *interim* intervention order at a *preliminary* hearing. You are not involved in the preliminary hearing. The magistrate can make an interim order based on the evidence presented by the police or the person applying for the order. However, the order does not apply to you until the police give you a copy of the order. The order will tell you when to come to court for a *determination* hearing, so that the court can hear from you. There will be a court appointment usually within 8 days.

WHAT HAPPENS AT THE DETERMINATION HEARING?

At the determination hearing, you will have the chance to tell the magistrate your side of the story. At this hearing, the court will either:

- confirm the existing interim order and make it final, or
- substitute the existing interim order for a final intervention order with different terms, or
- dismiss the application and end the interim order

WHAT HAPPENS IF I DON'T GO TO COURT?
If you accept the order and do not need any changes to it, you do not have to go to court. There will not be a warrant for your arrest, as an application for an intervention order is not a criminal case.

If you don't want the order or want to suggest any changes, you should attend, because if you are not there, the magistrate will probably make the order final. By staying away, you lose the chance to dispute the order or say how it should be changed.

HOW DO I DISPUTE THE ORDER?
The only way to dispute the order is to attend the determination hearing. The magistrate will hear all the evidence and decide whether the order is justified. The court can agree to an adjournment if you need time to prepare your case or to organise witnesses. You will then be able to challenge the evidence presented by the other person, give evidence yourself and call any witnesses.

The evidence of the other person will often have been presented at the preliminary hearing in writing (in an affidavit). If you are not given a copy, you should ask for a copy of the other person's affidavit. Challenging the evidence given by the other person usually involves 'cross-examining' the other person, that is, asking them questions about the evidence they have given.

If you have a lawyer, your lawyer may do this. If you do not have a lawyer, you are not able to ask the other person questions directly.

You must work out what questions you want to ask, write them down and then give them to the magistrate, who will then decide which questions are 'allowable' (because, unlike a lawyer, you cannot be expected to know what it is OK to ask).

The magistrate or another person nominated by the magistrate will then ask the questions for you. If you need time to work out what questions to ask, or to get legal advice about what questions to ask, you may ask for an adjournment.

A few things to consider:

- Even if you think the person has no need to be distressed, anxious or fearful; if they really are, and their feelings are based on incidents involving you, the order will be made.
- If you agree that some incidents really happened, the precise details of what happened are not really important to the court. For example, if the person claims that you have repeatedly damaged their property, and you agree that you did damage their property, it does not really matter which items were damaged, or exactly how. There is no point in trying to dispute the order on the basis that the person is wrong about the details.
- There is no need to dispute the order if you do not have any particular need to see the other person or go to places where he or she might be. Before agreeing to an order, be sure to get legal advice in case the order affects you in ways that you are not aware of. For example, an intervention order may make it more difficult to get a family law court order to see your children.

CAN I HAVE A LAWYER?
You can have a lawyer to handle the case for you if you wish. Names of lawyers who do this type of case can be obtained from the Law Society (Tel: 8229 0222) or the Yellow Pages.

Charges will vary and you should ask about the cost when making the appointment or at the first interview. Legal aid is not granted for intervention order cases, because they are not criminal matters, so if you hire a lawyer you will have to pay their fees.

You do not have to have a lawyer if you do not want one. Often, people represent themselves in these cases. Even if you represent yourself, you may should get legal advice, either from a private solicitor, a community legal service, or the Legal Services Commission.

CAN THE ORDER STOP ME FROM GOING TO MY OWN HOME?
Yes, the police or a magistrate can make this a term of an interim intervention order, and a magistrate can make this a term of a final intervention order if they believe it is necessary to protect the other person. This can include stopping you from going to a house you own or rent, to the place where you normally live, or anywhere else. If your personal possessions are still in the house, you can ask the magistrate to make an order about their return or collection. It is advisable not to rely on a friend or family member to collect your possessions and bring them to you unless the magistrate has specifically allowed this, because some intervention orders are written to prevent this. An order does not change who owns the home, it only stops you from going there. When a relationship has broken down, a Family Law Court can share out the property; it is advisable to get legal advice about this.

If you are renting a property named in an interim intervention order, you cannot end the tenancy agreement before the determination hearing.

WHAT ABOUT CONTACT WITH CHILDREN?
If your children are living with the person protected by the order, then the order may stop you from spending time with them. If possible, the order should be designed to take the children's need to see you into account. If there are parenting orders in place, the magistrate must take these orders into account. The magistrate can make an intervention order which fits in with the family law orders. However, when making an interim intervention order, the magistrate can temporarily vary or suspend an existing parenting order. When making a final intervention order, a Magistrates Court may change a family law order, but it can only do so if it has evidence that was not presented to the Family Law Court at the time it made the original order.

If there are no Family Law Court orders, you can ask the magistrate to consider the children's need to see you in deciding the terms of the order. An order can be made which allows contact and/or communication with the other person about children's arrangements, and/or allows you to attend counselling or mediation together. However, it is up to the magistrate whether this will happen.

If you think the final intervention order does not make adequate arrangements for parenting your children, you may apply for a Family Law Court order. You should not try to contact the children if the intervention order stops you. You now need a Family Law Court order, even if you were having regular contact before. Breaking the intervention order is a crime with serious penalties. Also, breaking the order could affect a Family Law Court application. It is very important not to harm your case for seeing your children by making any mistakes about the intervention order. Once you have a Family Law Court order, this overrides the intervention order.

WHAT ELSE CAN BE ORDERED?
Every intervention order must require the defendant to give up any firearms and firearms licence, and disqualifying them from having firearms. If you need a firearm as part of your job, you should get legal advice. A defendant can also be ordered to attend an **intervention program**. Currently programs are only available in relation to violent behavioural issues for men in the Adelaide metropolitan area.

If you and the other person lived together in rental housing before the intervention order, and if you are a party to the rental agreement, a **tenancy order** can be made in addition to the intervention order. A tenancy order gives your interest in the tenancy agreement to a specified person (not necessarily the protected person). Any bond money paid by you is not paid out to you but stays held as bond money for the new person responsible for the tenancy. If the court (not the police) makes an intervention order and believes there is a reasonable likelihood of harm to family members because of problem gambling, it may issue a **problem gambling order** in addition to the intervention order.

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WHAT CAN I DO IF THE ORDER IS UNREASONABLE?
The purpose of the order is to protect the other person. If it is really necessary to restrict your activities to achieve this, then the magistrate will do so. However, if you think the order will create unreasonable restrictions on your activities that are not necessary for the other person's safety, you should point this out to the magistrate at the determination hearing.
Inconvenience is not enough. You must show that this will cause you a serious problem. For example, if the order will stop you from earning your living or doing other legitimate and necessary things, tell the magistrate about this the first time you are in court. Suggest ways the order could be changed to solve the problem without affecting the other person's safety.

CAN I APPEAL AGAINST THE ORDER?
Yes. You can appeal to the Supreme Court within 21 days. It is a good idea to get legal advice first, because you may have to pay expensive court fees to appeal, and legal costs to the other side if you lose. The order still applies while the appeal is being decided.

HOW LONG DOES THE ORDER LAST?
An intervention order is ongoing and continues in force until it is revoked.

CAN I APPLY TO CHANGE THE ORDER?
A defendant has to wait at least 12 months after the order was issued to apply to change or stop it. The court can set a longer time you have to wait. If you apply, the application will only be successful if you can prove there has been a substantial change in circumstances. You do this by completing an application form at the court and making a sworn written statement about the changed situation. A time will be made for a hearing. You will need to convince the court that the order can be changed without risk to the other person. The other person is entitled to have their say as well. The court may also dismiss the application if it considers it to be frivolous or vexatious.

DOES THE ORDER APPLY INTERSTATE?
Not automatically. However, a protected person can apply to register the intervention order in another State. Once this has been done, the police there can enforce it just as they can here.

WHAT IF THE OTHER PERSON CHANGES THEIR MIND AND WANTS TO SEE ME?
Even if the other person wants to contact you, you must not break the intervention order, because this is a crime with a maximum penalty of two years. The fact that the other person agreed to the breach does not matter. If the other person invites you around or does anything else that encourages you to break the order, you must refuse to speak to them and keep away.

If the other person wants to resume a relationship with you, or be able to see you for certain purposes, they can apply to the court to change or remove the order. They can ask the police to help with this. Unlike defendants, who have to wait at least 12 months before applying to change or remove the order, the other person can do so at any time. It is up to the court to decide whether to change the order based on all the evidence.

To order copies of this free fact sheet visit www.lsc.sa.gov.au or telephone 8463 3528

For free legal advice contact the Legal Help Line 1300 366 424.